

Amendment A  
Application No. 10/696,284  
Page 5 of 8

REMARKS/ARGUMENTS

Claim 11 has been amended to address a minor informality and other issues raised by the Examiner. Reconsideration of the ten pending claims, 11-20, in view of the amendments above, the remarks below, and the terminal disclaimer provided herewith is respectfully requested.

Turning to the specific objections and rejections:

Claim Rejection for Obviousness-Type Double Patenting

1. Claims 11-20 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-28 of copending Application No. 10/655,478 of Akashe.

Applicants respectfully request that the Examiner hold the provisional rejection based upon non-statutory double patenting in abeyance until such time that claims 12-28 of pending USSN 10/655,478 are issued. Once such claims have been issued, Applicants will consider filing a terminal disclaimer at that time. Therefore, Applicants respectfully submits that the rejection is overcome.

2. Claims 11-20 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/655,259.

Applicants respectfully request that the Examiner hold the provisional rejection based upon non-statutory double patenting in abeyance until such time that claims 1-22 of

Amendment A  
Application. No. 10/696,284  
Page 6 of 8

pending USSN 10/655,259 are issued. Once such claims have been issued, Applicants will consider filing a terminal disclaimer at that time. Therefore, Applicants respectfully submits that the rejection is overcome.

3. Claims 11-20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 10-28 of U.S. Patent No. 6,787,173.

In response, Applicants provide herewith a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a Prior Patent ("Terminal Disclaimer") and an authorization to charge Deposit Account No. 06-1135 for any appropriate fees.

Applicants submit that the Terminal Disclaimer overcomes the nonstatutory double patenting

Claim Rejections - 35 U.S.C. § 103

4. Claims 11-20 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent No. 4,091,120 of Goodnight Jr. et al. (herein the '120 patent) in view of U.S. Patent No. 5,725,899 of Cole et al. (herein the '899 patent).

Claim 11 has been amended to include the limitation "wherein a portion of the recovered proteins is recycled to the membrane and water is added to replace water removed with said flavor compounds." Support for this amendment may be found in the specification as filed at least at page 13, lines 24-29 and Figure 8. The aforementioned limitation is not taught or suggested by the '120 patent nor the '899 patent. As such, claim 11 is patentably distinct from the '120 patent

Amendment A  
Application. No. 10/696,284  
Page 7 of 8

and the '899 patent in combination.

As claims 12-20 depend on claim 11, Applicants request that the present rejection be withdrawn from each of claims 11-20.

Amendment A  
Application. No. 10/696,284  
Page 8 of 8


CONCLUSION

By way of the amendments herein and the Terminal Disclaimer provided herewith Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard Kaba at (312)577-7000 so that such issues may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Applicant to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY



Julie A. Hopper  
Reg. No. 50,869

Address all correspondence to:  
FITCH, EVEN, TABIN & FLANNERY  
Suite 1600 - 120 South LaSalle Street  
Chicago, IL 60603-3406

Direct telephone inquiries to:  
Richard A. Kaba  
312-577-7000